IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 88 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

BHAVNAGAR BONE & FERTILIZERS CO. PVT. LTD.

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 09/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Commissioner of Income-tax, Rajkot, Income-tax Appellate Tribunal, Ahmedabad Bench 'A" ("the Tribunal" for short) has referred the following question of law for the opinion of this Court under section 256(1) of the Income-tax Act, 1961 ("the Act" for short) :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee company is an 'Industrial undertaking' within the meaning of clause (c) of sub-section (6) of section 2 of the Finance (No.2) Act, 1971 ?"

2. FACTS :

The relevant facts in brief are that the assessee is a Company. The previous year relevant for the assessment years 1975-76 to 1978-79 ended on March 31, 1975, March 31, 1976, March 31, 1977 and March 31, 1978 respectively. The assessee filed the returns of income and claimed that its status should be taken as 'Industrial Company'. The Income-tax Officer asked the assessee to give details of manufactured goods sold and ready goods sold. The assessee filed the details. The Income-tax Officer on perusal of the details found that more than 50% of the income was out of the trading activities and the income from manufacturing activities was less than 50%. Thus, he held that the assessee could not be treated as an 'Industrial Undertaking" and took it as a trading company for assessment years under consideration. In appeals, the CIT (Appeals) vide its consolidated order held that the assessee is an "Industrial Company" after following the order of the Tribunal which was produced before him. Thereupon the Commissioner of Income, Rajkot approached the Tribunal. The Tribunal disposed of the appeals of the department vide consolidated order dated January 27, 1984 holding therein that the issue was considered by the Tribunal earlier in favour of the assessee and as no distinguishing facts were brought to its notice, the order of CIT (Appeals) was required to be confirmed. Thereupon the Commissioner of Income-tax made an application under section 256(1) of the Act and on being satisfied that a question of law arises for the opinion of this Court, the Appellate Bench has referred the above quoted question for the opinion of this Court.

3. OPINION :

From the record of the case, it is evident that the Tribunal has relied upon its earlier decision rendered on August 31, 1976 in the case of this very assessee for the Assessment Year 1971-72 and the question which is referred to for our opinion was also referred to the High Court for its opinion for Assessment Year 1971-72. In COMMISSIONER OF INCOME-TAX v. BHAVNAGAR BONE AND FERTILISER CO. LTD., (1987) 166 I.T.R. 316, the Division Bench has held as under :-

"The Tribunal had merely reproduced the relevant provision of the Finance (No.2) Act of 1971, and had not made any attempt to interpret it. The Tribunal had not discussed in detail as to how the principles laid down in the decisions referred to by it helped in interpreting the expression 'engaged in the manufacture or processing of goods'. Prima-facie, the conclusion reached by it on the basis of various clauses of the agreement that the assessee-company was intimately connected with the activities of the firm, and that it could not be inferred that the assessee-company had decided to stop its activities altogether and leased out the factory at a fixed rent to the firm,did not seem to be justified. It was the duty of the Tribunal to discuss evidence which was led by the assessee-company and reach a conclusion on appreciation of such evidence in the light of the definition of 'industrial company'. Since it had failed to do so, the question whether the assessee was an industrial company within the meaning of section 2(6)(c) of the Finance (No.2) Act, 1971, could not be answered."

Ultimately, in the aforesaid case, the High Court observed that it would be open to the Tribunal to dispose of the appeal under section 260(1) of the Act in the light of the observations made by the Court after determining the question which ought to have been decided. Following the decision which is mentioned above, we remand this matter also to the Tribunal with a direction to dispose of the appeal in the light of the observations made by this Court in C.I.T. v. BHAVNAGAR BONE & FERTILISER CO.LTD. (1987) 166 I.T.R. 316. The Reference is accordingly disposed of, with no order as to costs.

(J.M.Panchal,J.) (M.S.Shah, J.)
(patel)